

A Statement by the Chicago Council of Lawyers in Opposition to the Hearing to Consider the Nomination of Michael Brennan and in Opposition to the Nomination of Michael Brennan

On January 24, 2018, Michael Brennan, nominee for a lifetime judicial appointment on the 7th Circuit, is scheduled to appear before the Senate Judiciary Committee. Brennan is not a qualified candidate and is far outside the mainstream of judicial thought. Brennan has been unable to earn his way through a decades-long bipartisan process for judicial nominations in this Circuit; rather, he floated his way to the Judiciary Committee hearing only because those long-standing procedures have been ignored.

Brennan holds views well outside the mainstream of judicial practice and thought, including the following:

1. He believes that judges are not obliged to follow constitutional precedents with which they disagree. He did so repeatedly during his time as a trial judge in Wisconsin state courts, and was repeatedly reversed for doing so. (For details, see <https://www.afj.org/our-work/nominees/michael-brennan>.)
2. He is overtly hostile to discrimination claims by women, LGBTQ individuals and minorities. In furtherance of those views he recommended two candidates to the Wisconsin Supreme Court who are similarly hostile to such individuals, while heading up Wisconsin Governor Scott Walker's nominating commission for that court.
3. He has expressed the belief that the Executive Branch need not respect the constitutional rights of citizens (and non-citizens) during times of war, including the "war on terror". (See <https://www.afj.org/wp-content/uploads/2018/01/WSJ-Letter-to-the-Editor-CLEAN.pdf>)

In light of his extreme views, Brennan failed to earn the requisite votes from Wisconsin's bipartisan nominating commission, but the President nominated him anyway. Brennan failed to earn the full support from both of his home-state Senators, yet Senator Grassley proceeded to schedule his hearing anyway, ignoring the fact that Wisconsin Senator Tammy Baldwin withheld her "blue slip" (a precedent that should be of concern to both Democrats and Republicans).

The seat that Brennan is nominated to fill has been vacant since 2010, in part because Brennan urged Wisconsin Senator Ron Johnson to withhold his “blue slip”, something Johnson did, resulting in the vacancy remaining open (for him to try to eventually fill). Unlike Brennan, two previous nominees earned the requisite votes from Wisconsin’s bipartisan nominating commission. Also unlike Brennan, one of the previous nominees was able to earn the full support of his home-state senators. That prior nominee also earned the support of a bipartisan majority of the Senate Judiciary Committee. Yet, his nomination was blocked by Senator McConnell from receiving a confirmation vote.

Now, for Michael Brennan, all norms and bipartisan compromises are out the window. Senator Grassley, Senator McConnell, and President Trump have forged a path of no resistance for his nomination. It is apparent that Mr. Brennan is being nominated solely for his extreme political views and without regard to any suggestion of merit for the important position to which he is nominated. His nomination demeans the role of our independent judiciary and diminishes respect for our courts (and the bipartisan procedures we have used for decades to try maintain that respect for appointees). Our courts are independent and should not be subject to the manipulation of partisan politicians in efforts to fill those courts with undeserving nominees. When Mr. Brennan’s record and qualifications are fully explored, we believe the record will demonstrate him to be an utterly unqualified and inappropriate candidate for the 7th Circuit.

The Chicago Council of Lawyers, which has been actively involved in evaluating judges and judicial candidates for approximately 50 years, urges Senator Durbin - and all Senators on the Judiciary Committee - to oppose this hearing and this nominee.